

REMARKS

The drawings stand objected to under 37 C.F.R. 1.83(a). More specifically, the Examiner objects to the “utility rate ratio” not being shown in the drawings. In response, Applicants have amended “utility rate ratio” to “utility rate” in claims 1 and 6-8, and request withdrawal of the objection on this basis.

Claims 1 and 6-8 stand rejected under 35 U.S.C. 112 as being non-enabling. In response, Applicants have amended the “utility rate ratio” to “utility rate”, and request withdrawal of the §112 rejection on this basis.

Claims 1-8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (U.S. Patent No. 5,553,235), in view of Kincheloe et al. (U.S. Patent No. 4,120,031), in view of Gerardin et al. (U.S. Patent 6,222,822), and further in view of Killian et al. (U.S. Patent No. 6,477,683). Applicants respectfully traverse the rejection because the cited references, taken alone or in combination, do not disclose or suggest a diagnosis unit that diagnoses the performance of the system resources.

In the Office Action (Paper No. 12), on page 4, paragraph 7, the Examiner states that the Chen reference teaches “a diagnosis unit that diagnoses the performance of the system resource (“apparatus”, “performance diagnostics”, See claim 11).” However, Chen does not perform any diagnosing of the system resources. ^{col. 2, lines 36-40} Rather, Chen merely teaches capturing performance statistics. Diagnosing occurs by an external user comparing the captured performance statistics against known problematic statistics. As recited in the

abstract of Chen, "Remote diagnosis can easily be provided by a user capturing a performance session, saving to a file, and transferring the file to a central facility for comparison against its pathological libraries." Thus, Chen does not disclose or suggest an apparatus or method that diagnoses system resources of a computer system, as recited in independent claims 1 and 7-8. Rather, user interaction is required to diagnose a problem. The Examiner even admits on page 6, line 12 of the Office Action (Paper No. 12) that "Chen fails to explicitly teach wherein the system diagnosis apparatus transmits, to the computer system, information including upgrade recommendation information for replacing or adding to a system resource that is diagnosed to have low performance." Chen fails to teach transmission of such information because the information cannot be generated without a user comparing the captured performance statistics to known problem statistics. Instead, the Examiner cites the Bergeron reference as teaching that the system could be programmed to send/transmit a notification to indicate that it was approaching a maximum utilization (or low performance). However, Bergeron is directed to a method and apparatus for dispatching services. More specifically, Bergeron is directed to a system for dispatching field service engineers to a plurality of remote sites in response to fault conditions detected in systems (See the Abstract). *not in claim*
Thus, Bergeron also requires user interaction.

The Examiner correctly recognizes that Chen fails to explicitly teach the performance statistics, specifically the utility rates and that utility rates are being acquired and stored in memory. The Examiner cites Kincheloe for teaching a utility usage monitoring

system that receives and stores basic utility data needed for utility monitoring. However, Kincheloe discloses a utility usage monitoring system for monitoring usage of utility such as electric power, gas, water, etc. (Col. 7, lines 57 to 68, and Col. 8, lines 45-50). Data stored in a memory are base rates, break points, etc., as disclosed at column 9, lines 24-26. Since the word “rate” has a meaning of a charge per unit of a public service commodity, the Examiner may construe the “utility rate” as a charge of a public service commodity such as electric power, gas, or water, and may also construe the “break point” as “threshold of the utility rate.” However, “utility rate” with a meaning of ratio or percentage, as utilized and claimed in the present invention, is not disclosed in Kincheloe. The “utility rate” in Kincheloe is not a percentage, but a charge per unit of a public service commodity. Accordingly, one would not have been motivated to combine Kincheloe with Chen as suggested by the Examiner.

Gerardin discloses a system for monitoring and controlling transient errors in a digital communication network. Gerardin optimizes a digital transmission network operation by tracking transient errors and monitoring a high speed packet switching network node (Col. 4, line 44 to Col. 5, line 3). Gerardin does not disclose or teach diagnosing the performance of the system resources and transmitting upgrading information for replacing or adding to a system resource that is diagnosed to have low performance, as in the present invention. Thus, since the object of Gerardin differs from that of the present invention, one would not be motivated to combine Gerardin with the other cited references.

In Killian, the word “utility” means a utility program in a computer. The Examiner pointed out that Killian discloses a threshold that declines as the optimization proceeds (Col. 18, lines 59-67). However, “utility function” disclosed therein is not a “rate” or “percentage” but a mathematical function as disclosed at column 18, line 67 to column 9, line 15. Regarding the “threshold”, Killian discloses a threshold of electric power used in a simulated annealing program (Col. 18, line 59 to Col. 19, line 15). However, Killian does not disclose a “utility rate”, as recited in claim 1.

Bergeron discloses a method and apparatus for dispatching services, where the system could be programmed to indicate that it was approaching maximum utilization and a sales person notified of the possibility to sell an upgrade (Col. 9 lines 17-20). In Bergeron, an autodialer is provided (Col. 5, lines 7 to 9), and the autodialer autodials the telephone number of the field service engineer, as disclosed at column 6, lines 41 to 51, and a synthetic voice message is transmitted to the field service engineer (Col. 7, lines 14-19). Therefore, Bergeron fails to disclose that the diagnosis unit transmits information to the computer system.

Thus, for all the above reasons, the combination of Chen, Gerardin, Kincheloe, Killian, and Bergeron fails to disclose or suggest the subject matter of claim 1 as recited, and withdrawal of the §103 rejection of independent claim 1 is respectfully requested.

With respect to claim 2, the Examiner considers Bergeron to teach an ordering unit which orders a system resource determined by the system resource determining unit as a

system resource for upgrading since Bergeron teaches that the system could be programmed to indicate that it was approaching maximum utilization and a salesperson notified of the possibility to sell an upgrade. (Col. 9, lns. 17-20). However, Bergeron does not teach an ordering unit which orders the system resource. Rather, it merely notifies a salesperson of the possibility of an upgrade. User interaction is required to diagnose whether an upgrade should occur and whether an order should be placed with the salesperson. Clearly, the program processor 12 does not order the system resource independent of user interaction, as in the present invention. For this reason, withdrawal of the §103 rejection of claim 2 is respectfully requested.

With respect to claim 3, the Examiner states that Chen teaches “where the ordering unit transmits, utilizing a network, the ordering information on the system resources to a device installed at the supplier of the system resources.” Applicants respectfully traverse this statement. With respect to the rejection of claim 2, the Examiner cites Bergeron as teaching an ordering unit. However, in the rejection of claim 3 the Examiner cites Chen as teaching an ordering unit that transmits ordering information on system resources to a device installed at a supplier of the system resources. The Examiner considers the computer processor as a unit that makes an order. However, Chen does not teach an ordering unit that transmits ordering information, *i.e.* upgrades information automatically. Chen teaches that the interface 70 uses the API broadcast function to identify the data supplier daemons 210 available in the network 200. For each instrument that is activated by a user, the API

requests/response interface 160 is used to negotiate what data values belong to the set. If the data supplier daemon 210 is restarted, the performance tool 90 uses the same interface to renegotiate the set. All data feeding is active, and in certain cases when it is not, both the performance tool 90 and the data supplier daemon 210 keep information of the set. (See Col. 12, lns. 28-55). Clearly, Chen fails to teach an ordering unit which orders a system resource that is determined by a system resource determining unit as needing an upgrade. For this reason, withdrawal of the §103 rejection of claim 3 is respectfully requested.

With respect to claim 4, the Examiner states that Chen inherently teaches “a notifying unit which notifies, utilizing a network, the result of diagnosis by said diagnosis unit to the user of the system.” Applicants respectfully traverse this statement. As argued above with respect to the rejection of independent claim 1, Chen does not perform diagnosing of a computer system independent of user interaction. Accordingly, Chen fails to notify a user of the result of the diagnosis without user interaction. That is, a user must transfer the file to a central facility for comparison against its pathological library, unlike the present invention. For this reason, withdrawal of the rejection of claim 4 is respectfully requested.


Since claims 5-6 ultimately depend upon claim 1, they necessarily include all of the features of their associated independent claim plus additional features. Thus, Applicants submit that the §103 rejection of claims 5-6 has also been overcome for the same reasons mentioned above to overcome the rejection of independent claim 1, and also because of the

features recited in those claims. Applicants respectfully request that the §103 rejections of claims 5-6 also be withdrawn.

For all of the foregoing reasons, Applicants submit that this Application is in condition for allowance, which is respectfully requested. The Examiner is invited to contact the undersigned attorney if an interview would expedite prosecution.

Respectfully submitted

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